

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
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BISHOP JT UNION HIGH SCHOOL)	File No. SLD 143991
DISTRICT, BISHOP, CA)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	CC Docket No. 96-45

**REQUEST FOR REVIEW OF THE DECISION AND WAIVER OF THE
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR BY
BISHOP JT. UNION HIGH SCHOOL DISTRICT, BISHOP, CA**

I. INTRODUCTION

1. The Bishop Jt Union High School District, (the “District”) appeals the decision of the Universal Service Administrative Company (“USAC”) concerning the schools and libraries universal service support mechanism (also known as the E-rate program) denial of funding due to alleged competitive bidding violations, to wit, the Superintendent signed the internet access service contract as both the applicant and the service provider. The District believes that special circumstances exist to justify a waiver of the Commission’s rules, and, accordingly files this Request for Review and Waiver of the administrative rules applied to this case.
2. The District requests that the Commission review the decision of USAC denying funding on a Form 471 application because special circumstances are present that lead USAC to decide the District had not complied with the competitive bidding requirement of the SLSM.

II. BACKGROUND

1. Bishop Jt Union High School District is a very small school district located in a remote, rural area of the Sierra Nevada Mountains in central California. There are two districts located geographically close to one another, the elementary school district which serves the K-8th grade population and the high school district which serves the 9th-12th grade population of students. In the interest of economy at the time that the High School District filed their 2006 Form 471 application, there was

one Superintendent that served both of the Districts. There was a Form 470 filed for Internet Access services by Bishop Jt Union High School District and Bishop Elementary School District was the selected service provider as the only respondent vendor.

The options for Internet Access services in that area are, needless to say, limited. The Elementary School District receives the internet that is provisioned to the High School District from the California High Speed Network (K12HSN), a State subsidized network for internet access service to the K12 communities throughout the State. In order to connect directly to the K12HSN, there are specific equipment costs and bandwidth speeds necessary that can be very expensive. The Elementary District has absorbed those costs and is able to provide Internet Access to surrounding Districts at a much more affordable cost. The Internet Access service that is provided by the Elementary School District is managed by the IT Department there and is at a separate facility from the High School District. Since the time of the denial of the application, there are now two separate Superintendents for the two Districts. Additionally, during PIA review, the applicant was not given an opportunity to explain the circumstances surrounding the special conditions present in this District.

2. The District was notified that USAC had denied funding to the District. USAC stated that a competitive bidding violation and conflict of interest exist when the Superintendent signed the service contract as both the applicant and the service provider. The applicant who is

approving the service request cannot be the same person providing the service.

III. DECISIONS BY THE COMMISSION ON APPEALS

1. As noted in the decision published in the *Bishop Perry Middle School, New Orleans, LA* appeal, SLD # 487170, the “Commission may waive any provision of its rules on its own motion and for good cause shown.” (47 C.F.R. §1.3.) Additionally, a “rule may be waived where the particular facts make strict compliance inconsistent with the public interest.” *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).
2. In the Request for Review filed by *Glendale Unified School District*, File No. SLD-143548 decided on February 1, 2006, the Commission once again held that “The Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.”

3. On March 23rd, the FCC released the Approach Learning and Assessment Center, et.al appeal decision (DA 07-1332) granting waivers to 14 applicants. The Order indicates that all of the decisions at issue involve the denial of funding on the grounds that the underlying applications violated the Commission's competitive bidding rules. While there is no specific reference to the stated reason for denial of Bishop Jt Union High School District's application, we believe that the fundamental logic applied in the cases cited in DA 07-1332 should be applied in this instance.

IV. DISCUSSION

1. The District believes that under the circumstances described above, and pursuant to the applicable rulings by the FCC, there was no competitive bidding violation, waste, fraud or abuse committed. Further, the District believes that denial of this funding request does not "further the purposes of the statutory goal mandated by Congress of preserving and advancing universal service among schools and libraries."
2. District relies on the order in the Approach Learning and Assessment Center, et.al case, cited *supra*, that "...direct[s] USAC to conduct further investigation and analysis prior to denying funding for suspected competitive bidding violations..." The District was not given an opportunity to explain the special circumstances present that caused the seeming violation.
3. District also relies on the decision in the Glendale Unified School District appeal as cited above. In Glendale, "A rule may

be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.” We find that the action we take here promotes the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the “Act”), by helping to ensure that Glendale obtains access to discounted telecommunications and information services.” The District believes that its own special circumstances are substantially similar to those cited in the *Glendale* appeal. Accordingly, the District respectfully requests that the Commission grant the District’s Request for Review and Waiver.

VI. CONCLUSION

For the reasons discussed herein, the District respectfully requests the Commission grant the Request for Review and Waiver and Remand the case to USAC for further consideration pursuant to the E-rate rules.

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